

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 99-00148 SOM
)	
Plaintiff,)	
)	ADMINISTRATIVE ORDER
vs.)	REGARDING RETROACTIVE
)	AMENDMENTS TO CRACK
DAMIEN JOHNSON,)	COCAINE GUIDELINES
)	
Defendants.)	
)	
UNITED STATES OF AMERICA,)	CR. NO. 00-00444 SOM
)	
Plaintiff,)	
)	
vs.)	
PULEMAU FAITAU,)	
)	
Defendant.)	
)	
UNITED STATES OF AMERICA,)	CR. NO. 00-00454 SOM
)	
Plaintiff,)	
)	
vs.)	
ANTHONY FURTADO,)	
)	
Defendant.)	
)	
UNITED STATES OF AMERICA,)	CR. NO. 02-00076 SOM
)	
Plaintiff,)	
)	

vs.)
)
AMO TAUFI,)
)
Defendant.)
)

UNITED STATES OF AMERICA,) CR. NO. 02-00287 SOM
)
Plaintiff,)
)
vs.)
)
HARRISON CHAI,)
)
Defendant.)
)

UNITED STATES OF AMERICA,) CR. NO. 05-00321 SOM
)
Plaintiff,)
)
vs.)
)
JOEL CASTILLO,)
)
Defendant.)
)

UNITED STATES OF AMERICA,) CR. NO. 02-00351 SOM
)
Plaintiff,)
)
vs.)
)
FREDERICK DUMLAO,)
)
Defendant.)
)

UNITED STATES OF AMERICA,)	CR. NO. 06-00049 SOM
)	
Plaintiff,)	
)	
vs.)	
)	
SOO VITALE,)	
)	
Defendant.)	
)	

**ADMINISTRATIVE ORDER REGARDING
RETROACTIVE AMENDMENTS TO CRACK COCAINE GUIDELINES**

The Office of the Federal Public Defender for the District of Hawaii is appointed to represent the above defendants, who have been previously determined to have been entitled to appointment of counsel and who have been sentenced in this district for a crime involving crack cocaine or whose sentence included consideration of crack cocaine.¹ This appointment is for the purpose of

¹This Order does not appoint the Office of the Federal Public Defender to represent Myeshia Simpson in Crim. No. 99-00148 SOM, as Simpson was sentenced to a statutory minimum sentence and is, in any event, scheduled to be released by the Bureau of Prisons on February 27, 2008. Nor does this Order appoint the Office of the Federal Public Defender to represent Alicia Veloria in Crim. No. 00-00145 SOM, as Veloria has a pending motion under 28 U.S.C. § 2255. Counsel has already been appointed for Veloria with respect to the guideline amendments. This Order does not appoint the Office of the Federal Public Defender to represent Apelaamo Sulu in Crim. No. 01-00359 SOM, as he is scheduled to be released by the Bureau of Prisons on February 29, 2008, or Joseph Shorts in Crim. No. 99-00148 or Rebecca Kamakawiwoole in Crim. No. 02-00287, for whom other attorneys have been appointed.

determining whether that defendant qualifies to seek a reduction of sentence and to present motions, stipulations, or other filings relating to a reduction of sentence in accordance with the recent retroactive amendments to crack cocaine base offense levels under USSG § 2D1.1.

The appointment of the Office of the Federal Public Defender includes appointment to cases in which defendants were previously represented by attorneys from the Criminal Justice Act panel. However, if, without contacting the defendant involved, the Office of the Federal Public Defender is able to determine that a preexisting conflict has not dissipated or that a present conflict precludes representation of a defendant, then, no later than **five calendar days** from the date of this Order, the Office of the Federal Public Defender shall so notify Judge Susan Oki Mollway, so that an attorney from the Criminal Justice Act panel may be appointed. If a defendant declines to be represented by the Office of the Federal Public defender, that office shall immediately notify the court, so that other counsel may be appointed.

The United States Probation Office for the District of Hawaii is authorized to disclose to the Office of the Federal Public Defender for the District of Hawaii the Presentence Investigation Report and the Statement of Reasons

earlier submitted with respect to any of the above-captioned defendants so that conflict issues may be initially addressed.

The Bureau of Prisons has calculated tentative “projected release dates” for the above-captioned defendants. These “projected release dates” are subject to further verification by counsel. Anthony Furtado and Soo Vitale have “projected release dates” of August 5, 2008, and October 18, 2008, respectively, and their cases must be addressed by counsel with alacrity. Frederick Dumlaو has a “projected release date” of April 19, 2009. Harrison Chai and Pulemaو Faitau have “projected release dates” of November 28, 2010, and December 30, 2010, respectively. The other defendants have “projected release dates” after 2010: Damien Johnson (April 13, 2012), Joel Castillo (January 11, 2013), Amo Taufi (January 4, 2016).

In the case of any defendant whose “projected release date” is in 2008, 2009, or 2010, defense counsel shall, by **the earlier of one week after confirming with the defendant that counsel will be representing him or her or thirty days from the date of this Order**, send an Initial Notification to the court. The Initial Notification to the court shall state the following:

1. That defense counsel has communicated with the defendant concerning the amended guidelines, including in that communication: (a) notice to

the defendant that the amendments do not guarantee a reduced sentence, as the court may determine that the amended guidelines do not apply to a particular sentence or that, even if they do apply, a reduction is not warranted; and (b) notice to the defendant that a reduction in sentence, or even possible transport for a hearing if transport is authorized by the court, may disrupt certain prison programs that the defendant is seeking to enter or is already participating in; and

2. That the defendant has agreed to be represented by the attorney, has waived any conflict that counsel may have identified, and has expressed an interest in seeking a reduction or has declined to seek a reduction.

The Initial Notification shall be filed with the court and served on the Office of the United States Attorney and the United States Probation Office.

For defendants whose “projected release date” is in 2011 or later, the deadline for the Initial Notification to the court is **sixty days** from the date of this Order.

By the earlier of 60 days after the submission of the Initial Notification or 30 days before the “projected release date,” either a defense motion for a reduced sentence or a stipulation or agreement between the parties as to a reduced sentence shall be submitted to the court.

Any deadline set forth in this Order may be advanced or extended in a particular case by the sentencing judge, either upon a party's request or sua sponte.

The Clerk of Court is directed to file this Order in each criminal number captioned above and to serve the Order on the Office of the Federal Public Defender and on the United States Attorney's Office.

IT IS SO ORDERED:

DATED: Honolulu, Hawaii; February 28, 2008.



/s/ Susan Oki Mollway
SUSAN OKI MOLLWAY
UNITED STATES DISTRICT JUDGE

USA v. Johnson, et al., Cr. No. 99-00148 SOM; USA v. Faitau, Cr. No. 00-00444 SOM; USA v. Furtado, Cr. No. 00-00454 SOM;; USA v. Taufi, Cr. No. 02-00076 SOM; USA v. Chai, Cr. No. 02-00287 SOM; USA v. Castillo, Cr. No. 05-00321 SOM; USA v. Dumlaao, Cr. No. 02-00351 SOM; USA v. Soo Vitale, Cr. No. 06-00049 SOM; Administrative Order Regarding Retroactive Amendments to Crack Cocaine Guidelines